

Commodity Futures Trading Commission

§ 40.5

(1) Changes that are enumerated in § 40.6(d)(2) may be implemented without prior approval or certification if implemented pursuant to the notification procedures of § 40.6(d);

(2) Changes that are enumerated in § 40.6(d)(3)(ii) may be implemented without prior approval or certification or notification as permitted pursuant to § 40.6(d)(3);

(3) Changes in no cancellation ranges and trading hours may be implemented without prior approval if implemented pursuant to the procedures of § 40.6(a);

(4) Changes required to comply with a binding order of a court of competent jurisdiction, or a rule, regulation or order of the Commission or of another Federal regulatory authority, may be implemented without prior approval if implemented pursuant to the procedures of § 40.6(a); or

(5) Any other rule:

(i) The text of which has been submitted for review at least ten business days prior to its implementation and that has been labeled “Non-Material Agricultural Rule Change;”

(ii) For which the designated contract market has provided an explanation as to why it considers the rule “non-material,” and any other information that may be beneficial to the Commission in analyzing the merits of the entity’s claim of non-materiality; and

(iii) With respect to which the Commission has not notified the contract market during the review period that the rule appears to require or does require prior approval under this section, may be implemented without prior approval if implemented under the procedures of § 40.6(a).

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* Pursuant to Section 5c(c) of the Act, a registered entity may request that the Commission approve a new rule, rule amendment or dormant rule prior to implementation of the rule, or if the request was initially submitted under §§ 40.2 or 40.6 of this part, subsequent to implementation of the rule. A request for approval shall:

(1) Be filed electronically in a format and manner specified by the Secretary of the Commission with the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Set forth the text of the rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated);

(4) Describe the proposed effective date of the rule or rule amendment and any action taken or anticipated to be taken to adopt the proposed rule by the registered entity or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(5) Provide an explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles, and the Commission’s regulations thereunder, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, and how the rule fits into the registered entity’s framework of self-regulation;

(6) Certify that the registered entity posted a notice of pending rule with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity’s Web site. Information which the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity’s Web site but must be republished consistent with any determination made pursuant to § 40.8(c)(4);

(7) Provide additional information which may be beneficial to the Commission in analyzing the new rule or rule amendment. If a proposed rule affects, directly or indirectly, the application of any other rule of the registered entity, the pertinent text of any such rule must be set forth and the anticipated effect described;

(8) Provide a brief explanation of any substantive opposing views expressed to the registered entity by governing

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board or committee members, members of the entity or market participants that were not incorporated into the rule, or a statement that no such opposing views were expressed;

(9) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or the Commission's regulations that the Commission may need to interpret, in order to approve the new rule or rule amendment. To the extent that such an amendment or interpretation is necessary to accommodate a new rule or rule amendment, the submission should include a reasoned analysis supporting the amendment to the Commission's regulation or the interpretation;

(10) As appropriate, include a request for confidential treatment as permitted under the procedures of § 40.8.

(b) *Standard for review and approval.* The Commission shall approve a new rule or rule amendment unless the rule or rule amendment is inconsistent with the Act or the Commission's regulations.

(c) *Forty-five day review.* (1) All rules submitted for Commission approval under paragraph (a) of this section shall be deemed approved by the Commission under section 5c(c) of the Act 45 days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (d) of this section, unless the registered entity is notified otherwise within the applicable period, if:

(i) The submission complies with the requirements of paragraph (a) of this section;

(ii) The registered entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period other than for correction of typographical errors, renumbering or other non-substantive revisions. Any amendment or supplementation not requested by the Commission will be treated as the submission of a new filing under this section.

(2) The Commission shall commence the review period in paragraph (c) of this section for a compliant submission under § 40.4(b)(5) ten business days after its receipt.

(d) *Commencement and extension of time for review.* The Commission may

further extend the review period in paragraph (c) of this section for any approval request for:

(1) An additional 45 days, if the proposed rule raises novel or complex issues that require additional time for review or is of major economic significance, the submission is incomplete or the requestor does not respond completely to Commission questions in a timely manner, in which case the Commission shall notify the submitting registered entity within the initial forty-five day review period and shall briefly describe the nature of the specific issues for which additional time for review shall be required; or

(2) Any period, beyond the additional 45 days provided in § 40.5(d)(1), to which the registered entity agrees in writing.

(e) *Notice of non-approval.* Any time during its review under this section, the Commission may notify the registered entity that it will not, or is unable to, approve the new rule or rule amendment. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or the Commission's regulations, including the form or content requirements of this section, with which the new rule or rule amendment is inconsistent or appears to be inconsistent with the Act or the Commission's regulations.

(f) *Effect of non-approval.* (1) Notification to a registered entity under paragraph (e) of this section does not prevent the registered entity from subsequently submitting a revised version of the proposed rule or rule amendment for Commission review and approval or from submitting the new rule or rule amendment as initially proposed in a supplemented submission; the revised submission will be reviewed without prejudice.

(2) Notification to a registered entity under paragraph (e) of this section of the Commission's determination not to approve a proposed rule or rule amendment of a registered entity shall be presumptive evidence that the entity may not truthfully certify that the same, or substantially the same, proposed rule or rule amendment under § 40.6(a) of this section.

(g) *Expedited approval.* Notwithstanding the provisions of paragraph

(c) of this section, changes to a proposed rule or a rule amendment, including changes to terms and conditions of a product that are consistent with the Act and Commission regulations and with standards approved or established by the Commission may be approved by the Commission at such time and under such conditions as the Commission shall specify in the written notification, provided, however, that the Commission may, at any time, alter or revoke the applicability of such a notice to any particular product or rule amendment.

§ 40.6 Self-certification of rules.

(a) *Required certification.* A registered entity shall comply with the following conditions prior to implementing any rule, other than a rule delisting or withdrawing the certification of a product with no open interest and submitted in compliance with §§ 40.6(a)(1)–(2) and § 40.6(a)(7), that has not obtained Commission approval under § 40.5 of this part, that remains dormant subsequent to being submitted under this section or approved under § 40.5 of this part, or that is submitted under § 40.10 of this part, except as otherwise provided by § 40.10(a):

(1) The registered entity has filed its submission electronically in a format and manner specified by the Secretary of the Commission with the Secretary of the Commission.

(2) The registered entity has provided a certification that the registered entity posted a notice of pending certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information that the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site but it must be republished consistent with any determination made pursuant to § 40.8(c)(4).

(3) The Commission has received the submission not later than the open of business on the business day that is 10 business days prior to the registered entity's implementation of the rule or rule amendment.

(4) The Commission has not stayed the submission pursuant to § 40.6(c).

(5) The rule or rule amendment is not a rule or rule amendment of a designated contract market that materially changes a term or condition of a contract for future delivery of an agricultural commodity enumerated in section 1a(4) of the Act or an option on such a contract or commodity in a delivery month having open interest.

(6) *Emergency rule certifications.* (i) New rules or rule amendments that establish standards for responding to an emergency must be submitted pursuant to § 40.6(a);

(ii) Rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than twenty-four hours after implementation. Such rules shall be subject to the certification and stay provisions of paragraphs (b) and (c) of this section.

(7). The rule submission shall include:

(i) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part (in the case of a rule or rule amendment that responds to an emergency, "Emergency Rule Certification" should be noted in the Description section of the submission coversheet);

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of intended implementation;

(iv) A certification by the registered entity that the rule complies with the Act and the Commission's regulations thereunder;

(v) A concise explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder;

(vi) A brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants,